REMARKS/ARGUMENTS

In reply to the Claim Rejection stated in the Official Action, the applicant respectfully considers the examiner's finding to be inaccurate, and puts forward the following arguments in defence of the patentability of the claims.

In paragraph 2 of the Official Action, the examiner rejects claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for falling to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the examiner considers that the phrase "such as" is indefinite because claim 4 is unclear.

In this respect, the applicant agrees to remove the sentence "such as an ATX board and an operating system." from claim 4. If the examiner considers it necessary the whole claim 4 may be deleted.

In paragraph 4, the examiner rejects claims 2-4, 8 under 35 U.S.C. 102(b) as being anticipated by Thorpe (US 5,276,865).

Thorpe describes a system for making automatic backup copies of a hard drive of at least one computer to a storage unit

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connected to said computer. However, we disagree with the
examiner's view that in Thorpe the user selects files by
selecting what drives are to be backed up; we consider that the
system does not select individual files stored in a hard drive
but only "whole" drives and we consider that the Thorpe
specification by no means describes the possibility of selecting
files (note column 3, lines 8-9 where the user can select what
drives are to be backed up, without selecting files; note column
1, lines 2-3 where the device automatically backs up the memory
(not selected files) of a computer; note column 6, lines 38-39
where the backup control file backs up two drives (not selected
files) to a tape backup; note column 9, lines 20-22, where a
means for storing instructions directs a computer to back up said
first non-volatile memory media (not selected files)).

In 1992, when Thorpe was filed, backups could be performed
with application programs or at the operating system level. In
both cases, the selection of files was very difficult because to
achieve such selection the user should modify, for example,
script files or batch files and write an instruction or command
for each file selected every time the user wanted copy a file.
For this reason, Thorpe does not consider the possibility of
selecting files and only performs the backup copy of "whole"
drives.

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On another hand, Thorpe includes backup software; however we disagree with the examiner's view that Thorpe comprises configurable control software. Thorpe does not disclose any operation apart from the copy itself that is performed by the software, so the "software required" in column 5, lines 9-10 is only the boot control file (necessary in any computer) and the backup system software and these cannot be considered "configurable control software" as defined in the claim, i.e. performing the steps of detecting a command, running backup software, detecting the end of the backup copies and switching off the computer. For example, in claim 13, Thorpe clearly defines what is the required software: a boot control _file_ of the computer which is modified to include a path to a backup memory location, and a backup control _file_ able to execute a first routine for backing up the memory of the computer and a second routine for disconnecting the computer from a power supply. The execution of each routine is controlled by the CPU of the computer, so clearly the control is performed by hardware and not by software. Also, in our invention, the configurable control software is always running over the operating system in order to detect the switched-off "**command**" generated by the user.

Finally, we disagree with the examiner's view that, in Thorpe, when the user interacts with the computer, a "**command**" is

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generated for the computer to be switched off. In the following
we will support our view by showing that the "command" in Thorpe
is not generated by the user and does not perform the steps
claimed in claim 2.

In column 8, lines 17-20 of Thorpe, the "command" is
generated by the CPU, and not by the user's interaction with the
computer, and said "command" is to begin execution of the backup
control file, and not to switch off the computer. It has to be
borne in mind that in 1992, when Thorpe was filed, it was not
possible to cause switching off of the computer by means of
software (operating system) and such switching off by software is
the only way to generate a "command" for switching off the
computer. In Thorpe, when the power switch is switched to "off"
(the user interacts with the computer), a "signal" is sent to the
CPU (note column 7, lines 17-19). The difference between
"command" and "signal" is important. A "Command" is an
instruction that must be executed by CPU, whereas "signal" only
indicates to the CPU that an event has occurred in the computer
(in this case, that the power switch has been switched to "off").
A "Command" can only be generated by software, as in Windows XP,
wherein when the user wants to switch off the computer, acts on
the operating system (Start button), which generates a "switch
off" "command" to the CPU. CPU receives the "command" and acts on
the motherboard to switch off the computer. In our invention, the

"configurable control software" detects this "command" before it
"reaches" the CPU and executes the "backup software", i.e. the
control of switching off is performed by software. In Thorpe, the
"signal" is generated by the power switch and always "reaches"
the CPU, no control being possible and this triggers execution of
the "backup control file", i.e. the control of switching off is
performed by hardware and "configurable control software" or
similar doesn't exist. Also, since the configurable control
software detects the switched-off "command" of the computer, the
system assures that open files do not exist and that, therefore,
do not take place errors in the moment of the execution of the
backup copy. This way it is carried out the copy of all the files
selected by the user. It is impossible in Thorpe.

In summary, it is submitted that **claim 2 is new over Thorpe**
in that the user can select the files to back up, in that the
system comprises a "configurable control software" and in that
the switching off of the computer is performed by software,
generating a "command"; and that the claim is also not obvious,
because the new features are not derivable by the skilled man
from the teachings of Thorpe or other prior art documents and it
provides advantageous technical effects.

In view of the above arguments, it is submitted that the
subject matter of claim 2 is novel and non-obvious; and that

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consequently dependent claims 3 to 8 are also novel and non-

obvious. Accordingly, it is submitted that claims 2-8 are in

condition for allowance.

Respectfully submitted,
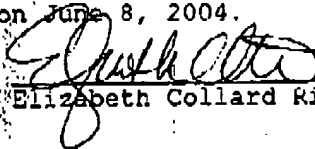
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